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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/912,709	07/25/2001	Michael Hollerman	068550-0105	5180

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FOLEY & LARDNER LLP
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CHICAGO, IL 60610-4764

EXAMINER

KESACK, DANIEL

ART UNIT	PAPER NUMBER
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3691

MAIL DATE	DELIVERY MODE
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08/24/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/912,709	Applicant(s) HOLLERMAN ET AL.	
	Examiner Dan Kesack	Art Unit 3691	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 May 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-178 is/are pending in the application.
- 4a) Of the above claim(s) 1-38, 52-83, 94-127 and 141-168 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 39-51, 84-93, 128-140 and 169-178 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Amendment filed May 11, 2007 has been entered and fully considered. Claims 1-178 are currently pending. The rejections are as stated below.

Response to Amendment

2. The declaration filed on May 11, 2007 under 37 CFR 1.131 has been considered but is ineffective to overcome the Cohen reference.

The evidence submitted is insufficient to establish diligence from a date prior to the date of reduction to practice of the Cohen reference to either a constructive reduction to practice or an actual reduction to practice. In this case, diligence is required from just prior to the date of the Cohen reference to the actual reduction to practice, November 2, 2000.

The period during which diligence is required must be accounted for by either affirmative acts or acceptable excuses. *Rebstock v. Flouret*, 191 USPQ 342, 345 (Bd. Pat. Inter. 1975); *Rieser v. Williams*, 225 F.2d 419, 423, 118 USPQ 96, 100 (CCPA 1958). In the submitted declaration, there are periods of time where diligence is lacking. Specifically, there is no statement regarding time period from the date of the Cohen reference, September 13, 2000, to October 30, 2000, when Mr. Aery e-mailed Mr. Lim regarding the status of source files. Therefore, diligence is lacking for at least this

Art Unit: 3691

reason. The entire period during which diligence is required must be accounted for, and a 2-day period lacking activity has been held to be fatal when accounting for the period in which diligence is required. *In re Mulder*, 716 F. 2d 1542, 1545, 219 USPQ 189, 198 (Fed. Cir. 1983)(37 CFR 1.131 issue). Therefore diligence is lacking and the declaration under 37 C.F.R. 1.131 is ineffective.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 39-41, 45, 50, 51, 84, 87, 92, 93, 128, 129, 132, 133, 136, 139, 140, 169, 147, 177, and 178 are rejected under 35 U.S.C. 102(e) as being anticipated by Cohen et al., U.S. Patent Application Publication No. 2002/0116310, as cited in the previous Office Action.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 43, 44, 86, 131, and 172 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cohen, as cited in the previous Office Action.

8. Claims 42, 85, 130, 131, and 170 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cohen, in view of Roland's article "New Rules planned for options", as cited in the previous Office Action.

9. Claims 49, 91, 138, 176 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cohen, in view of Brady, U.S. Patent Application Publication No. 2002/0128955, as cited in the previous Office Action.

10. Claims 47, 89, 134, and 173 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cohen, in view of Finebaum, U.S. Patent Application Publication No. 2002/0156719, as cited in the previous Office Action.

11. Claims 48, 90, 135 and 171 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cohen, in view of Roland in view of Finebaum, as cited in the previous Office Action.

Conclusion

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dan Kesack whose telephone number is 571-272-5882. The examiner can normally be reached on M-F, 9:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander Kalinowski can be reached on 571-272-6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Daniel Kesack
Art Unit 3691
August 13, 2007



HANI M. KAZIMI
PRIMARY EXAMINER